9. The licensee shall allow any officer authorised by the Central or the State Government to inspect at any time the area covered by the Prospecting licence as also any accounts, plans and records maintained by him ;

10. The licensee shall before the licence is issued to him deposit as security a sum of Rs. 200 in respect of every square kilometer or part thereof for which the licence is granted for the due observance of the terms and conditions of the licence;

11. The licensee shall engage a qualified geologist or a mining engineer to conduct the prospecting methodically ;

12. The licensee shall not give any ore-raising contract during the prospecting stage ;

13. The above mentioned area is subject to verification after actual survey ; and

14. Local and other Cesses as prevalent in Chickmagalur District.

By Order and in the name of the Governor of Karnataka,

Y. B. CHINNAPPA REDDY,
Under Secretary to Government, I/c.
Commerce and Industries Department.

2694—S.O. 691

GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR SECRETARIAT

BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL, BANGALORE

Dated this 27th day of January 1978.

Present

Sri. Syed Nazir Ahmed. B A. B.L.,

Presiding Officer

Complaint No. 4 of 1977 in A. I. D. No. 1 of 1975.

Complainant.—

Sri K. C. Hombaiah, 6, Andhra Devanga Building, Gandhinagar, Bangalore-9.

Vs

Opposite Party.—

The Management of the Radio and Electrical Manufacturing Co. Ltd., Mysore Road, Bangalore-560026.

Appearances

For Complainant :—by Sri K. P. Sachindranath, President, Karnataka Karmika Congress, Bangalore-9.

For Opposite Party :—non appeared.

AWARD

This is a complaint under Section 33A of the Industrial Disputes Act. The Complainant is an employee of the Respondent Company. The following are the avernments of the complaint. He had joined service on 16th July 1962. A promotion which was due to him had been denyed. He moved the Labour Court in reference No. 82 of 1969 in this matter. During the pendency of that reference the promotion he had asked for was granted to him. He had asked for scales of pay which one Sri Balaram was getting as Goods Inward Assistant when the said Balaram had been transfered from that place and the Complainant had been directed to discharge those duties. His request was not complied with. The matter went through the process of conciliation and the reference was made by the State Government for adjudications and it is registered as A.I.D. No. 1 of 1975 on the file of this Tribunal. During the pendency of this reference a false chargesheet was put up on 22nd April 1976 for violation of Certified standing Order 21(c). An enquiry was set up. Two officers were appointed as enquiry officers. In addition a representative of the company was allowed to present the case of the Management. The Complainant requested that assistance of an office bearer of his Union may be permitted to him. This was not granted. An *ex-parte* enquiry is held. He was asked to make good the value of the shortage. The company filed an application befere the Industria Tribunal on 24th July 1976 before which also a reference was pending. The complainant was not concerned in that Dispute so that application was not maintainable and it was held to be so. There is breach of section 33 of the Industrial Disputes Act, breach of provisions of the Certified Standing Orders in appointing two members to conduct enquiry. In allowing a representative of the Management to examine witnesses and is not allowing a representative of his union to represent him. And that on the merits of the allegation there was no case for the Management as according to the existing procedure and practice whenever there is short supply the employers collect it from the suppliers and that the Barrel had been opened in the absence of the complaimant in spite of his instructions not to do so. The Company was not *bona-fide* in taking action against the complainant. It is a case of victimisation and un-fair labour practice and there has been discrimination in awarding the punishment of dismissal.

2. Respondent filed, objections:—The material avernments are that it was not True that the complainant had been posted in place of Sri Balaram. The complainant could not hold the place of Sri Balaram when he was only a clerk. He had not complied with the grievence procedure. The complainant had not participated in the enquiry and therefore it had to be proceeded with *ex-parte*. He was not allowed the assistance of a person of his association as such person was not an employee of the Respondent Company and therefore the assistance had been rejected. There is no want of

Bonafides and breach of practice and procedure, victimisation, unfair labour practice and discrimination as alleged. The rest of the things are admitted.

3 On the basis of the above pleadings the following issues were framed :—

"(1) Whether the complainant proves that there has been violation of the provisions of Section 33 (2) (b) of the Industrial Disputes Act, in not seeking the approval of the order of dismissal of 24th July 1976.

(2) Whether the proves that the enquiry is violative of principles of natural justice, *mala-fide* and an act of victimisation, unfair labour practice.

(3) What orders if no."

4. The complainant has examined himself and closed his case. Several documents were marked for him. The Respondent chose to absent himself. Sri K. P. Sachidanath had appeared for the complainant.

5. It can not be disputed that a reference was pending before this Tribunal in A. I D. 1 of 1975 which was at the instance of the complainant, as a matter of fact that the Respondent admits the pendency of such a reference. The enquiry culminating in the dismissal of the complainant on 24th July 1976 has taken place during the pendency of A. I. D. 1 of 1975. Under Section 33 ( ) (b) an application had to be made by the employer seeking approval of the action taken by the employer It can not be denied that the complainant was concerned in reference No. 1 of 1975, as that Industrial Dispute had arisen solely at his instance. It can not be said that he is not interested in it. The failure of the Respondent in not complying with the provisions of the proviso to section 33 ( ) (b) of the Industrial Disputes Act. in not making an application to the Tribunal for approval which had to synchronise with the order of the dismissal is obvious and the complainant had to succeed on this score itself. My find therefore on Issue No. 1 is in favour of the complainant.

6. The complainant has examined himself. He has sworn to the facts which have been enumerated by him in the complaint in respect of his joining service, the reference before the Labour Court regarding his promotion. He has further spoken in respect of the enquiry. He had objected to two officers being appointed as enquiry officer. He has adverted to the amendment to the Model Standing Orders published in Gazette of India part-2. Section-3 page 8047 dated 5th July 1975. They are available in Ext. C-4 dated 10th May 1976. Ext. C-5 dated 13th May 1976 is another representation made to the enquiry officer. Besides other things he had wanted an office-bearer of his Union to defend

him in the enquiry. He has made some aspersions on the conduct of the personal officer who had represented the company. Ext. C-10 is a copy of the proceedings dated 12th May 1976. It shows that the prayer to have a representative of his choice to defend him in the enquiry was not granted but that he was permitted to take the assistance of his co worker who is a union representaseve. This apart the enquiry officers have not examined the witnesses before them. The witness is allowed to file a written statement. Ext. C-15 dated 27th May 1976 is a submission which had been made by the complainant to the enquiry officers. Therein he has alleged that his request to get a co-worker or one of the office bearer of his union to defend him. Ext. C-16 dated 31st May 1976 shows that the complainant had agian requested to enable him to engage a representative of his association and he had wanted to know the orders of the enquiry officers in that respect. Ext C-17 dated 1st June 1976 shows that he had made some allegations against Sri Somashekar styling. him as virtually conducting the enquiry himself. Under Ext C-19 dated 9 h June 1976 a showcause notice is issued to the complainant regarding proposed punishment of dismissal and making good the loss on account of short supply. On 2nd June 1976 the complainant is placed ex-parte and on 24th July 1976 an order of dismissal is communicated to him.

7 Since the Respondent remained absent it is not possible to know their stand. The enquiry proceedings any way are not before this Tribunal. Standing Order 19 of the company enables the Manager or any officer specially empowered by him to hold the enquiry, It is not known whether the term Manager refers to the factory Manager or there was a Manager in addition to factory Manager. Any way the appointment of two persons as enquiry officers is a bit intriguing. Standing Order 19 may not be enabling them to appoint any such two persons. Any one person was sufficient, what prompted the factory Manager to appoint two persons as enquiry officers is not easily intelligible to me. The complainant had asked for services of a representative from his Union. This has not been granted A perusal of the Standing Orders of the company does not disclose that there was any such prohibition. The complainant says that he was not a member of local union of workers. It would not be proper then to ask the complainant to take the assistance of that union or a co-worker who is a member of that Union. The complainant has brought to the notice of the enquiry Officers about the recent amendment to the Model Standing Orders published in the Government of India Gazette dated 5th July 1975 which shows that an office bearer of the Union of which the worker is a member can appear and defend the worker against whom an enquiry is being held. In the absence of a prohibition in the Standing Order of the company, the enquiry officers would have acted properly had they granted the prayer of the complainant on the analogy of the Model Standing Orders. If they did not do so

necessarily they have prejudiced the defence of the complainant. This apart the enquiry officer who have examined the witnesses in person before them rather than allow a statement prepared by the witness or prepared for him to be marked. The complainant has also alleged that the representative of the Management had taken on him the role of prosecutor and had almost stepped into the shoes of the enqiry officers themselves. Since the Respondent had remained absent we are not in a position to appreciate their verison in this respect. The complainant has also brought to my notice under Ext. C-27 which is a working procedure of Goods Inward Department, in particular to provisions 4.2.7., 4.2.9., and 4.3.3, one is not sure whether all those matters had been taken into consideration. I find that there has been lack of opportunity to the complainant to defend himself. There is therefore violation of principles of natural justice. The order of dismissial is liable to be set aside on this ground also. This is my finding on the second issue.

8. In the Result the complainant succeeds and is entitled to be reinstated. The order of dismissal is hereby set aside, and the Respondent directed to re-instate him and pay the back wages.

9. No cost.

Syed Nazir Ahmed,
Presiding Officer,
Additional Industrial Tribunal.
Banagalore.

Order No. SWL 25 LLA 78.
Bangalore, dated 16th/22nd February 1978.

Whereas before the Additional Industrial Tribunal at Bangalore a complaint was made under section 33-A of the Industrial disputes Act. 1947 (Central Act No. 14 of 1947), by Sri. K. C. Hombaiah, 6, Andra Devanga Building, Gandhinagar, Bangalore-9 ;

And, whereas the said Additional Industrial Tribunal adjudicated upon the said complaint and submitted its award to the State Government as required under section 15 read with Section 33-A of the said Act.

Now, therefore, in exercise of the powers conferred by sub-section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), the Government of Karnataka hereby directs the publications of the said award in the Karnataka Gazette.

By Order and in the name of the President of India,

B. MANAMOHAN,
Under Secretary to Government,
Social Welfare and Labour Department.

2634—S. O. 692